

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Wednesday, August 25, 1976 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in the Council Conference Room, County Office Building, Rockville, Maryland, at 8:10 P.M. on Wednesday, August 25, 1976.

PRESENT

Norman L. Christeller, President	Neal Potter
John L. Menke, Vice President	Jane Ann Moorc
Elizabeth L. Scull, President Pro Tem	Dickran Y. Hovsepian

ABSENT

Esther P. Gelman

The President in the Chair.

Re: Worksession on Bills Nos. 11-76 & 23-76,  
Employer/Employee Relations

The Council met in worksession on Legislative Bills Nos. 11-76 and 23-76, Employer/Employee Relations, with Director of the Department of Personnel Lloyd, Executive Secretary of the Personnel Board Moser, Assistant County Attorney Hutt, Council Staff Director McDonell, Legislative Research Coordinator Schloo, President of the Montgomery County Government Employees Organization Mills, and President of the International Brotherhood of Police Officers, #498, Moore.

President Christeller stated that he does not agree with the statement in the memorandum to the Council from Legislative Counsel Tierney, dated July 22, 1976, that "the Council may not legislate directly in these specified areas which are reserved for the Personnel Board to regulate." However, Mr. Tierney does not explain his opinion, and is not present tonight to discuss the matter.

Mr. Lloyd stated that he does not agree with Mr. Tierney's statement either. In drafting Bill No. 11-76, he specifically tried to avoid conflicts with the Charter and duties of the Personnel Board.

The Council addressed a chart prepared by Ms. Schloo comparing the provisions of Bills Nos. 11-76 and 23-76 and suggested amendments.

With respect to the definitions of "confidential employee" and "management-level employee" as employees to be excluded from a meet and confer

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type of employee organization, it was noted that Bill No. 23-76, submitted by the Montgomery County Government Employees Organization (MCGEO), does not define "confidential employee".

President Christeller stated that the Executive Branch, which submitted Bill No. 11-76, believes that there are some employees who would not be considered to be management-level, but who, because of the confidential nature of their responsibilities, should be excluded.

Mr. Lloyd stated that the definition in Bill No. 11-76 is intended to be broad, and should not contain a specific listing of positions. There should be a mechanism whereby exclusion from the organization can be determined on a case-by-case basis.

Members of the Council expressed the view that the definition of "confidential employee" in Bill No. 11-76, and the revised definition in Mr. Lloyd's memorandum of August 24, 1976, are too broad, and that the definition proposed by the Personnel Board is too narrow.

In response to expression of views by some present that some management-level employees should be allowed to be included in the employees organization, others expressed the opinion that then these employees might be directly involved in the negotiation process. In response to a statement that these bills provide for a "meet and confer" type of organization and that no binding agreements are provided for and therefore no negotiations would be involved, President Christeller stated that the General Assembly will consider and may possibly enact enabling legislation to provide authority for collective bargaining for County employees. If the Council permitted management-level employees to join the meet and confer organization, and the enabling legislation were subsequently enacted, the Council would then be in the position of having to amend the law to exclude some employees who had not previously been excluded. Employees of the Office of Budget and Research, for example, would be advising the County Executive on a cost-of-living adjustment, and should not be permitted to be part of the employees organization.

Mr. Lloyd stated that there is not a definition that fits every situation. The ultimate position-by-position decisions will be based on discussions between management and the organization. The definition should provide reasonable guidelines for those discussions.

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Mr. John Hardy, Montgomery County Firefighters Association, noted that the bills would exclude uniformed officers above the rank of corporal, and stated that the same standards of management-level employees should be applied to the Police and Fire Departments.

President Christeller suggested that the definitions be approached by identifying those positions or types of positions that should be excluded from joining the organization.

It was agreed that confidential aides to elected officials should be excluded.

Mr. Tull, Vice President, MCGEO, stated that when considering exclusions for confidential employees, the Council should keep in mind the trustworthiness of the confidential employees. The fact that they are members of the organization would not cause them to give up confidential information.

Mr. Lloyd stated that he recommends that employees down to the level of division or section head be excluded from the organization, but that there is no standard nomenclature among the departments for the various divisions and sections within the departments.

President Christeller expressed the view that Mr. Lloyd's recommendation would reach too low in the departments. However, one of the things that the employees organization will be involved in is the pursuit of grievances, and a lot of those grievances might be with regard to the actions of people who are well below the department head level.

Mr. Mills stated that if the exclusion reaches down to the assistant section heads, he would have to step down from his position as President of MCGEO. He believes that such an action by the Council would cause the organization to lose about one-third of its members.

President Christeller suggested that the bills define "employee" as persons who may be permitted to join the organization, and add "except the following" with a listing of positions and types of positions that would be excluded from joining.

At the suggestion of Councilman Hovsepian and without objection, the Council agreed that non-merit system employees should be excluded from joining the organization.

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At the suggestion of President Christeller and without objection, the Council agreed that heads of departments, principal offices and agencies should be excluded from joining the organization.

At the suggestion of Councilman Hovsepian and without objection, the Council agreed that deputy or assistant department, principal office and agency heads should be excluded from joining the organization.

Without objection, the Council agreed that principal administrative aides to department heads and assistant or deputy directors should be excluded from joining the organization.

Without objection, the Council agreed to exclude from the organization those employees who report directly to or whose immediate supervisor is the County Executive, County Council, County Councilmembers, or the Chief Administrative Officer, and principal aides to the foregoing.

Mr. Whitney, Executive Vice President, International Brotherhood of Police Officers, stated that the exclusion process that the Council is going through is provided for elsewhere in the bills at the time a petition is served on the County requesting recognition of a particular employee organization. In one bill, the responsibility for this is given to the Personnel Board. He suggested that the Council simply define a category of employees to be excluded.

President Christeller stated that in order to determine whether the organization should be recognized, the County government must know who is eligible to vote within the organization. Regardless of the definitions that are developed, there will be questions as to whether certain positions are excluded and that will be subject to negotiation. The Council is attempting to provide a reasonably clear definition.

Mr. Lloyd stated that where the line of exclusion is drawn depends on how a particular department is organized, and they are all different in County government. The trend is to establish clusters of organizational resources for specific purposes. He would like to keep the level of organized employees at the lowest possible level.

Councilman Hovsepian expressed the view that division or section heads that report directly to the department heads are management-level employees and should be excluded. Below that level, the employees are operational in nature, but could exercise supervisory functions.

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President Christeller stated that even though a section head may not report directly to the department head, that employee still has significant management responsibilities with respect to personnel matters subject to negotiation.

Councilman Menke pointed out that it will be hard to make a distinction between sections in departments with just a few people and sections in very large departments.

Mr. Wolfman, MCGEO, stated that it is the desire of MCGEO to extend the benefits of an employees organization to the maximum number of County employees in terms of support derived from being a member of a group and numbers to give them political power.

Mr. Tull inquired as to whether section heads and their assistants really have the authority to hire and fire employees and take disciplinary or budgetary actions. It is his impression that section or division heads can recommend the termination of an employee, but it is strictly a recommendation to the department head.

President Christeller stated that the question raised by Mr. Tull is partly a matter of management style on the part of each particular department head.

In response to a statement that department heads rely heavily on recommendations of division and section heads in making management decisions, Mr. Tull stated that in every process people rely on the next person down the line.

President Christeller inquired as to which elements of the meet and confer or collective bargaining process will be less constructive or impaired in any way if a division head in the Department of Transportation, for example, is permitted to be a member of the bargaining unit.

Mr. Lloyd replied that it is a matter of divided loyalty between management and employees. The CAO is responsible for administering public policy, but he does not do it alone. He depends on department heads, who depend heavily on division heads to carry out policy and generate program needs. Division heads do not act solely on direction from above.

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Councilman Menke stated that the line has to be drawn somewhere. The very existence of the meet and confer organization and the identification of employee units is divisive. The Council must look at the issues to be before the bargaining unit. If one of the issues is the working conditions within the Department of Transportation, for example, the Director would have to rely on the advice of division or section heads about those conditions.

(The Council recessed at 10:00 P.M., and reconvened at 10:10 P.M.)

With respect to the status of firefighters within the employees organization, President Christeller stated that it is the present position of the County Executive, and he agreed, that firefighters are not County employees. They are employees of the individual fire departments, and therefore are not covered by the provisions of these bills. Until the litigation on this matter is completed, the Council cannot address the issue.

President Christeller suggested that the Council provide that the heads of the next principal constituent level within the departments be excluded from the organization. For example, the Department of Finance is divided into the Divisions of Auditing, Accounts, Revenue, and the Purchasing Office. In the Health Department, however, the next constituent level is divided into two bureaus; he expressed the view that the exclusion should reach farther down into the Health Department. He suggested that at the end of the listing of positions, the Council include a statement to the effect of "and in the Department of Transportation, the heads of offices and divisions as the Department is presently constituted, and in all other departments and offices, such positions as determined by the CAO to carry comparable personnel management responsibilities to those division and office heads in the Department of Transportation." President Christeller stated that the law should specify that the CAO's designations are an issue that is subject to negotiation with the organization.

Mr. Mills stated that President Christeller's suggestion would go too far into the departments. He would prefer that the exclusion be limited to the deputy or assistant department heads.

Mr. Tull suggested that there should be an appeal provision from the process suggested by President Christeller. He stated that, as the Council is having difficulty drawing the line, so will the CAO.

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Councilwoman Scull suggested that specific position titles to be excluded from the organization could be put in a resolution of intent.

President Christeller stated that the Council must write the law in such a way that it can be interpreted by the courts, and a resolution of intent would have no weight. The language he suggested would be applicable in the future if the County government reorganizes, but a specific listing in a resolution of intent would not.

At the suggestion of Councilman Potter and without objection, the Council requested that Messrs Lloyd and Mills prepare a specific position listing of those employees who would be excluded from joining the organization, based on the Council's decisions tonight, so that everyone can see where the line would be drawn.

Without objection, the Council agreed to the following wording to follow the listing of types of positions to be excluded: Heads of the constituent offices and divisions in the Department of Transportation existing at the time of enactment of this bill and positions carrying a similar degree of personnel management responsibility in other departments and offices, as determined by the Chief Administrative Officer.

With respect to the question as to whether employees of the County Attorney's Office should be excluded, Councilman Hovsepian stated that Assistant County Attorneys represent specific departments, and may be in a position of advising a department head or the County Executive on a specific grievance in that department. Mr. Hutt added that the County Attorney's Office would also be in the position of defending the County in decisions it makes with respect to the meet and confer and collective bargaining units.

Without objection, the Council agreed that employees of the County Attorney's Office should be excluded from joining the employees organization.

Without objection, the Council tentatively agreed that employees of the Office of Budget and Research should be excluded from joining the organization. President Christeller indicated that he has a question as to whether the individual budget analysts should be excluded.

At the suggestion of Mr. Moser and without objection, the Council agreed to exclude the employees of the Office of Employee Relations and the Office of the Personnel Board.

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Without objection, the Council agreed to exclude the employees of the Department of Personnel.

The meeting adjourned at 10:50 P.M.

ATTEST:



Anna P. Spates, Secretary  
of the County Council for  
Montgomery County, Maryland